



California Department of Education – Curriculum & Instruction Branch

**Child Development
Division**

**MANAGEMENT
BULLETIN**

Subject: EXCUSED ABSENCES IN THE BEST INTEREST OF THE CHILD	No.: 03-09
Authority: CALIFORNIA EDUCATION CODE Sections 8208 and 8261	Date: August 2003
	Expires: UNTIL RESCINDED

ATTENTION: EXECUTIVE OFFICERS AND PROGRAM DIRECTORS OF ALL CHILD DEVELOPMENT DIVISION PROGRAMS, EXCEPT RESOURCE AND REFERRAL AGENCIES

PURPOSE

The purpose of this bulletin is to restate the statute and regulations regarding the use of excused absences that rely on "the best interest of the child." Through this Management Bulletin, the Child Development Division (CDD) reiterates the law and regulations regarding the use of "best interest" days in order to assist contractors to avoid future audit exceptions.

BACKGROUND

Education Code Section (§) 8208(e) defines "attendance" for the purposes of child care and development services in the following manner:

"Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of the parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

California Code of Regulations, Title 5, Education, (5 CCR), §18066(c) requires contractors to develop written excused absence policies, as follows:

Contractors shall adopt reasonable policies delineating circumstances that would constitute an excused absence for "family emergency" and "in the best interest of the child".

This regulation requires contractors to develop written policies describing the circumstances that constitute a family emergency and the time with a parent or relative that is in the best interest of the child. These

agency policies typically include examples of time for a child to be with a parent or relative that is in the "best interest of the child," e.g., vacation or court-ordered visitation.

Section 18066(f) of 5 *CCR* places reasonable limitations on the number of days of excused absence that can be claimed by a contractor in the best interest of the child:

Except for children who are recipients of protective services or at risk of abuse or neglect, excused absences "in the best interest of the child" shall be limited to ten (10) days during the contract period.

The CDD is aware that over the years a variety of interpretations have been offered regarding the use of excused absences "in the best interest of the child," some including their use for staff development days. Some contractors may have relied on those interpretations in adopting written policies to accommodate staff development days.

To aid Child Development contractors, the Department's annual document, *Child Development Attendance and Fiscal Reporting and Reimbursement Procedures* (page 16 for FY 2003/04), provides specific information on the use of the two percent flex factor to accommodate non-operating staff development days. (See attached reference sheet.) The entire document can be found at www.cde.ca.gov/fiscal/childddev/index.htm.

STATUTORY AND REGULATORY REQUIREMENTS

All child care and development contractors, whether direct service providers or alternative payment providers, are subject to the same definition of attendance and excused absences. In discussing "attendance" and "excused absences," the reference is to days that a provider is open to admit and provide services to children. Days in which a provider is not available to serve children cannot be claimed as an attendance or excused absence day. Excused absences may only be claimed for reimbursement on a day in which reimbursement is also claimed for children in attendance. Using the "best interest of the child" for a day in which the facility does not provide care for children, for whatever worthwhile purpose, cannot legally be considered a day of operation for which all of the children enrolled for that day have an excused absence.

A "best interest" day is one type of excused absence. The term "best interest days" is derived from the last clause in *Education Code* § 8208(e) that allows excused absences for children "to spend time with a parent or other relative ... that is clearly in the best interest of the child." This provision recognizes that a child spending time with their immediate or extended family is a legitimate reason for absence. Therefore, contractors are permitted to claim reimbursement for a child who is absent to spend "best interest" time with his or her family, in addition to the reimbursement claimed for children present at the facility on that day. A contractor who uses time spent "with a parent or other relative ... that is clearly in the best interest of the child" for a staff development day risks being out of compliance with the cited *Education Code* and 5 *CCR* sections. Unless the child meets one of the exceptions cited in 5 *CCR* § 18066(f), claims for excused absences "in the best interests of the child" are limited to ten days per child per year.

Contractors may not use excused absences for staff development or any other purpose for days on which the facility is not open to serve children. Claims of reimbursement for excused absences "in the best interest of the child" for days on which the facility is not open to admit and provide services to children could result in an audit exception and a reduction in the amount of funds earned by the contractor.

Questions regarding the information in this Management Bulletin should be addressed to the assigned Child Development Division Field Services Consultant.

/s/ Michael Jett

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/s/ Sue Stickel

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Attachment A: *Excerpts from 2003/04 Child Development Attendance and Fiscal Reporting and Reimbursement Procedures*

This Management Bulletin is mandatory only to the extent that it cites a specific statutory and/or regulatory requirement. Any portion of this Management Bulletin that is not supported by a specific statutory and/or regulatory requirement is not prescriptive pursuant to Education Code Section 33308.5.

Excerpts from ***2003/04 Child Development Attendance and Fiscal Reporting and Reimbursement Procedures***, Child Development Fiscal Services, Fiscal & Administrative Services Division, California Department of Education
www.cde.ca.gov/fiscal/childdev/index.htm

Page 13: **Enrollment vs. Operation vs. Attendance**

Days of Operation

A "Day of Operation" is a day the contractor provides child care and development services for one or more **certified** children enrolled.

Page 16: **Non-Operating Days**

Staff Development Days

Staff development days benefit the program because staff is being trained, but because children are not receiving services those days cannot be reported as days of operation and should not be included on the service calendar submitted. (If the contractor brings in substitute staff and provides subsidized services then it is a day of operation.) **IF** service calendar days are used as staff development days (without providing services) there **may** be an adverse affect on contract reimbursement, either by lowering the Maximum Reimbursable Amount (MRA) due to failure to meet the contract Minimum Days of Operation (MDO) or by insufficient service earnings:

Effect on MRA: Service calendar days used as staff development days **may** affect the contract MRA because the contractor is operating less than 100% of the MDO. Contractors who fail to operate at least 98% of the contract MDO will have the contract MRA *"reduced in proportion to the percentage of the contract minimum days of operation that the contractor was not in operation"* (Title 5, Section 18055). This allows a two percent (2%) "flex for minimum days of operation" (2% of a 250-day calendar is five days; 2% of 175 days is three days), and this allowance is usually sufficient to account for a few non-operating staff development days. However, the 2% "flex for MDO" is for *all days in the calendar* when the contractor fails to operate, so contractors should take care to not exceed this 2% MDO allowance or the MRA **will** be reduced (see "Flex Factors").

Effect on Service Earnings: Staff development days with no services provided may mean the contractor will not have sufficient total certified enrollment to generate enough service-level earnings to cover certified program costs or earn the contract MRA (see "Limits of Reimbursement"). To substitute for enrollment lost due to staff development days, a contractor may need to increase enrollment by enrolling more children, or enrolling children for longer periods of time, on days the program is in operation (see "Self-Help: CDFS Worksheets").

Page 46: **Flex Factors**

Flex for Minimum Days of Operation (MDO)

...This allows a 2% flex factor for agencies that do operate at least 98% of their contract MDO; contractors have that small degree of flexibility within the 98-100% in case they are short one or two days of operation.